

## **CARB ENFORCEMENT ADVISORY**

### COMPETITION VEHICLES AND PERFORMANCE AFTERMARKET PARTS IN CALIFORNIA: SALES, SUPPLY, USE REQUIREMENTS AND PENALTIES

The purpose of this advisory is to describe how the California Air Resources Board (CARB) conducts enforcement with regard to competition (racing) vehicles and performance aftermarket parts pursuant to the California Code of Regulations, Title 13 § 2220 et seq., California Code of Regulations, Title 13 § 2470 et seq., and California Vehicle Code §§ 27156 and 38391. A summary of this advisory is as follows:

- CARB enforces against individual vehicle owners (consumers) that have violated the law by tampering, modifying, or installing illegal parts on vehicles operated on a public highway.
- CARB enforces against any manufacturer, wholesaler, distributor, dealer, installer, retailer and/or repair shop or facility if they offered for sale or sold an uncertified vehicle, an illegally modified vehicle, or an illegal part, or installed an illegal part on a vehicle that is operated on a public highway.
- Violations of these requirements are subject to penalties up to \$37,500 per violation.
- This advisory describes actions that manufacturers, wholesalers, distributors, dealers, installers, retailers, repair shops, and consumers may take to help minimize the potential for non-compliance. CARB considers these actions when exercising enforcement discretion in determining an appropriate penalty.

As background, performance aftermarket parts such as exhaust headers, software tuners, air intakes, superchargers, and turbochargers typically increase vehicle performance. These parts and others typically require a CARB Executive Order (EO)<sup>1</sup> to be legally advertised, offered for sale, sold, and used in California. A performance aftermarket part without a CARB EO may be advertised, offered for sale, sold, and/or used in California if it is installed and used on a racing vehicle. California laws and regulations prohibiting advertising, offering for sale, selling, and using performance

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<sup>1</sup> If the part or modification is shown to not increase vehicle emissions, it is granted an **exemption** to emission control system anti-tampering laws. This **exemption** is called an Executive Order (EO). While the two terms "exemption" and "EO" may be used interchangeably, this advisory will use the term CARB EO throughout.

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aftermarket parts on emission-controlled vehicles are generally referred to as California's "anti-tampering" laws. In addition to explaining the legal requirements for the sale and use of performance aftermarket parts in California for consumers and industry participants, this advisory also describes actions industry participants can take to strengthen compliance, which, when documented, CARB will consider when deciding how to enforce California's anti-tampering laws.

### **Consumers**

Consumers can avoid violations by only purchasing, installing, and/or using performance products that have a CARB EO appropriate for their application.

CARB's mobile source certification programs are the fundamental component of California's motor vehicle emissions control program. All on- and off-road emissions-controlled vehicles or engines must be in a legally-certified configuration for operation on the California public highway system. CARB certifies emissions control systems for on- and off-road vehicles and engines, and ensures aftermarket parts do not adversely impact emissions control systems or emissions standards (Health & Safety Code §§ 43013, 43018, 43101, 43102, 43104, 43105, and 43107.) Aftermarket parts manufacturers that can demonstrate that its parts do not adversely impact engine emissions control systems are issued a CARB EO that allows the part to be legally advertised, offered for sale, and/or sold for on-road or off-road use in California.

Under California law, a public highway includes any public street or roadway, public dirt road, public park, or publicly-maintained right of way that is open to the use of the public for vehicular travel (Vehicle Code § 360), and a vehicle is any device that can be propelled or moved upon a public highway – this includes any car, truck, on- and off-highway motorcycles, and other on- and off-road recreational vehicles (Health & Safety Code § 39059; Vehicle Code § 670).

Operating an uncertified, tampered, or illegally-modified vehicle on a public highway is a violation of California law and subject to loss of Department of Motor Vehicles (DMV) registration, a failure at Smog Check, proof of correction, and fines. A certified vehicle which has been modified with a performance aftermarket part that does not have a CARB EO is tampered under the law (Vehicle Code §§ 27156 and 38391) and therefore is illegal to register or operate on or off a public highway in California.

**CARB conducts enforcement actions against individual vehicle owners that have violated the law by tampering, modifying, or installing illegal parts on vehicles operated on a public highway. Any person that illegally modifies or operates an uncertified or tampered vehicle on a public highway as defined by California law is**

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subject to a DMV registration stop and a penalty of up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).

**Manufacturers, Wholesalers, Distributors, Dealers, Retailers, Installers, and Repair Shops or Facilities**

CARB anti-tampering requirements are in place to protect the emissions reductions achieved by CARB's certification program and ensure compliance with the federal Clean Air Act. Manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities are in violation of California law if they offer for sale, sell, and/or install performance aftermarket parts without a CARB EO on a certified vehicle for operation on a public highway as defined by California law. **Such violations can occur regardless of any real or claimed intent regarding how the part will be used – such as a claim that the part will only be used on racing or competition vehicles.**

In California, manufacturers, wholesalers, distributors, dealers, retailers, installers, and/or repair shops or facilities may build uncertified vehicles, and manufacture, sell, and install performance aftermarket parts not covered by a CARB EO if those vehicles are racing vehicles and those parts are used on racing vehicles. The racing vehicle exemption in California law exempts racing vehicles from vehicle emissions controls (Health & Safety Code § 43001) and defines a racing vehicle as a competition vehicle not used on a public highway (Health & Safety Code § 39048).

For any person engaged in the business of retail sale or installation of add-on or modified part(s) which do not have a CARB EO, CARB regulations (California Code Regulations, title 13 § 2222(f)) require the person to keep records of such activity, including the date of sale or purchase, the purchaser name and address, vehicle model, and work performed, if applicable. Records must be available for CARB inspection and kept for four years from the date of sale or installation.

Violations are subject to penalties up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).

The magnitude of penalties and liability for violations generates a substantial risk for manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities participating in the racing vehicle and performance aftermarket parts market in California. In enforcing California law, CARB encourages manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities to minimize their risk of an enforcement action for non-compliance. CARB will be focusing enforcement on and reserving the highest penalties for cases where the responsible party was complicit or took little or no action to prevent potential violations. Where there is a violation, CARB measures the severity of the violation by

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considering all relevant facts and circumstances of each case, including eight statutory factors required by law (Health & Safety Code § 43024). CARB settles cases using its adopted Enforcement Policy, which lists additional factors CARB considers.

### Examples of Industry Practices That Strengthen Compliance

Manufacturers, wholesalers, distributors, dealers, installers, retailers, and/or repair shops or facilities that advertise, offer for sale, or sell uncertified vehicles or advertise, offer for sale, sell, or install performance aftermarket parts without CARB EOs must show the vehicle is a racing vehicle or their products are used on a racing vehicle. Taking the actions below will not absolve manufacturers, wholesalers, distributors, dealers, installers, retailers, and/or repair shops or facilities from liability under California law. However, some companies have found the following practices help minimize the possibility of unintentionally violating the laws. Moreover, in any potential enforcement action, CARB considers the actions a company proactively took to minimize non-compliance. The actions described below can include a range of information showing that the vehicle for which a part or component is manufactured, sold, or installed is in fact used solely for competition motorsports. No particular information or documentation is in and of itself conclusive. CARB considers the totality of the circumstances when exercising enforcement discretion.

- The company has, or is pursuing CARB EOs for covered products.
- Install, sell, advertise, and/or service only emissions legal parts (replacement parts and/or parts with CARB EOs) for vehicles with license plates and/or DMV registration.<sup>2</sup>
- Verify there is no license plate and/or registration prior to installing performance aftermarket parts or performing modifications without a CARB EO.
- Refuse to perform emissions-related repairs on licensed and/or registered vehicles (other than a return to original equipment manufacturer (OEM) certified configuration) that are missing or have tampered emission control systems such as catalysts, exhaust manifolds, turbochargers, exhaust gas recirculation (EGR), diesel particulate filters (DPFs), selective catalytic reduction (SCR), or obvious software tampering.

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<sup>2</sup> All references to DMV registration in this advisory refer to registration issued by the DMV that authorizes a vehicle to operate on or off a public highway.

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- Refuse to illegally modify any emissions-related parts on a certified vehicle, or install performance aftermarket parts without a CARB EO on a vehicle with a license plate and/or registration. A true racing vehicle should be trailered to any events or to any repair facility as they are illegal to operate on a public highway.
- Notify the vehicle owner that their vehicle is tampered and not legal for use on public highways.
- Educate and advise consumers against illegal modifications and the potential consequences.
- Label products without CARB EOs to clearly notify consumers in writing that these products are illegal to operate on any public highway and explain that this means any public paved or unpaved roadway or in a public park and these products are only legal if used on a racing vehicle. Also, explain that violations are subject to a maximum penalty of \$37,500 per violation per vehicle, revocation of registration by DMV, loss of use on California public right of ways, and proof of correction of the tampering.
- Confirm that the consumer has a legitimate reason for purchasing a product without a CARB EO by verifying and keeping documentation including the make, model, and vehicle identification number (VIN). Verify that the part(s) sold are appropriate for the identified racing vehicle, and that the racing vehicle is not licensed and/or registered with the DMV. Obtain information about the consumer including name, address, driver's license number, and any documentation and affiliation with a racing organization, club, sanctioning body, track, racing rulebook, etc., and a signed affirmation/affidavit that the product is for racing only.
- Isolate and control the sale of products without a CARB EO by documenting all sales information including, but not limited to, the make, model, year, VIN number, and any pertinent vehicle information, along with a detailed invoice of any work performed.
- Keep track of sales or installation of products without a CARB EO as sales and production numbers should be representative of the low numbers of true racing applications.

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- Only market and advertise products with CARB EOs and only sell or install products with CARB EOs.

**Any manufacturer, wholesaler, distributor, dealer, installer, retailer, and/or repair shop or facility is potentially liable if they offered for sale or sold an uncertified vehicle, illegally modified a vehicle, or offered for sale, sold, or installed a performance aftermarket part without a CARB EO on a vehicle operating on a public highway. Violations, including failure to keep records as required, are now subject to increased penalties up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).**

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